

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1964 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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RANSHI DEFVARAJ JJAIN DHARMASHALA

Versus

STATE OF GUJARAT

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Appearance:

MR NAGIN N GANDHI for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
DD Vyas for Respondent No. 2

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/12/1999

ORAL JUDGEMENT

Ld. Advocate Shri Nagin N Gandhi appeared on behalf of the Petitioner Trust and Ld. APP Shri V.M.Pancholi is appearing on behalf of the respondent no.1 & Learned Advocate Shri D.D.Vyas is appearing on behalf of the respondent no.2 Municipality. The said petition is taken up for final hearing today.

2. The brief facts of the present petition are that

the petitioner Charitable Trust has filed the present petition praying to issue a direction against the respondent not to collect any education cess from the petitioner trust and also prayed for injunction from collecting any education cess from the petitioner trust and also prayed to order for refund of education cess already collected from the petitioner trust. In the said petition respondent no.1 has not filed any reply to Respondent no.2 Municipality has filed the reply through its Chief Officer, Palitana Municipality.

3. Ld. Advocate Mr.Gandhi appearing on behalf of the petitioner Trust has submitted that in identical case in SCA No. 2682 of 1987, 3460 of 1987, 36892 of 1987 has been decided by this Court on 17.7.91 (Coram: S.D.Shah, J) the group of petitions a identical question was raised by other petitioner trust and ultimately this Court has allowed the petition partly with a direction to the respondents. I have perused the decision which has been cited by Mr.Gandhi & a similar question was decided by this Court on 17.7.91. The Ld. Advocate Shri Pancholi has not disputed the said situation. Therefore, considering the decision of this Court in group of petitions dated 17.7.91. The said petition is required to be partly allowed. Therefore the following order has been passed:-

#### ORDER

In the result, the said petition is partly succeeds. The petitioner is directed to make appropriate application to the first respondent State Government and on such application being made within 4 months from today, the State Government is directed to consider such application in the light of observation made in a group of petitions in referred above decision dated 17.7.91 within four months thereafter after hearing the petitioner trust and second respondent Municipality. It is abundantly clear that respondent no.2 Municipality has contended that State Government is the competent authority to decide entitlement to examine and once the claim of the petition is accepted by the State Government respondent no.1 herein, the petitioner shall be entitled to exemption from payment of education cess and it shall not be open to the second respondent Municipality to challenge the authority of the State Government to decide the entitlement of exemption. After the petitioner is held to be entitled to be exempted from payment of education cess by the State Government, the second respondent Municipality is directed to refund the amount of education cess to the petitioner trust within a period

of 3 months thereafter. In the result, rule is accordingly made absolute to the aforesaid extent in this petition with no orders as to costs. Direct Service is permitted.

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